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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 805

WM. FRASER ET UX., Petitioners

VS.

P. M. BARTON ET AL., Respondents

REPLY OF PETITIONERS TO THE OPPOSITION BRIEF FILED BY THE SOLICITOR GENERAL IN BEHALF OF THE UNITED STATES

WILS DAVIS,
Memphis, Tennessee
Attorney for Petitioner
W. H. FISHER,
Memphis, Tennessee
W. C. RODGERS,
Memphis, Tennessee
Of Counsel.

THE DAILY NEWS

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TO THE HONORABLE JUDGES OF THE SUPREME COURT:

We have recently filed a Reply Brief to the Opposition Brief of P. M. Barton et al, but the same was prepared before we were supplied with a copy of the Government's Opposition Brief and we now desire to reply to this.

I.

It is stated on pages 6-7 of the Government's Brief that the Petitioners are contending, for the first time in this Court, that the Three-Way Land Company, the Cor-

poration from whom Petitioners bought the cotton, was the first purchaser. We do contend that this seller corporation was the first purchaser, but we submit that we are not subject to the implied charge that it is an after thought first brought to notice in this Court.

This contention came out naturally in our efforts to deal logically with the exact holding of the Circuit Court of Appeals. See our Petition, page 18, Sec. 3-5.

As shown in our first Reply Brief, there was a distinct change of theory on the part of the Plaintiffs. The original Bill does not claim that Petitioner was a purchaser at all, to say nothing of being a first purchaser, but the Complainant, in the course of the trial, changed their theory by conceding that Petitioner was a purchaser, (R. p. 537), as he indeed claimed in his answer; but their concession undertakes to contend that he was a purchaser from the share-croppers, the growers, when that was not the case at all. He never knew the share-croppers and does not know them now.

The Stipulation cited by the Government conclusively establishes this fact. R. 106, paragraph 2 concluding sentence. This Stipulation does not show, as the Government contends, that Petitioner knew he was **purchasing penalty cotton from producers,** instead of from an intervening purchaser, but shows exactly the opposite, to-wit, that he purchased from a corporation, which, itself, cannot escape the roll of a first purchaser, and which recognized its responsibility for and actually assumed liability for the payment of these penalties. See letter of April 24th. R. p. 481.

It is further argued by the Government that Petition-

er relies upon this agreement to relieve him of the obligation for the penalty. The Learned Circuit Court of Appeals did not put it upon the basis of an agreement, but undertook to hold Petitioner on the grounds that Petitioner collected the tax by reason of the fact that he bought the cotton with notice. In our Petition, we addressed ourselves directly to that holding and argued, as we repeat, that Petitioner did not collect the tax, nor intend to do so, but simply bought cotton from a good and solvent corporation, amply able to respond to the Government for any tax it owed, and that Petitioner did not have notice in the sense that he knew that he was to be considered a first purchaser of the cotton, and for that reason, burdened with the obligation to collect a tax for the Government. This liability he expressly excluded by his letter, supra.

The simple facts are that he did not intend to bother with the tax, he did not do so, and he had no notice that he was expected to do so, especially when he was buying cotton from a thoroughly solvent corporation, amply able to respond to its obligations in the same manner as any other cotton trader might do on the market and should be able to do, to-wit, to go into the market and buy of solvent corporations cotton without having to see to it that such corporation had properly dealt with the original producers of that cotton.

We appeal to this Court to look closely at the pleadings and the concessions made in the course of the trial, feeling that an accurate and fair analysis of Petitioners' actions will sustain his contention, that he is simply in the roll of a purchaser of cotton on the market and had no duty whatever with respect to a tax.

In this view, Petitioner does not feel that he is in the least neglecting the rights of his Government because of the simple fact that the corporation that sold him the cotton was amply able to pay the tax. As to whether the corporation or Petitioner made the better trade, he feels that that is no concern of the Government, which could, by any simple suit, recover its tax in full, and was never under the necessity of intervening in this law suit to accomplish the collection of the tax.

II.

The Government, in its argument, seeks to justify the interpolation, for such it is, into the Tennessee Statute, protecting privileged communications between husband and wife, of an exception, which is not found in that Statute nor in any Tennessee decision, but which is to be put into the Statute in order to satisfy an idea that such a statute should not prevent the exposition of fraud and the discovery of concealed funds. There was much ado made about this in the Record. There was no charge of fraud, as fraud should be charged, but there was an attachment issued for lock boxes in banks in Memphis on the idea that funds were therein concealed. But an opening of the lock boxes revealed there was nothing to this charge whatever.

If this exception is allowed to be engrafted on to the Tennessee Statute it amounts to its repeal or nullification, because this means that it can at any time be neutralized by a mere charge of fraud, whether bona fide or fictitious.

Then the idea is pursued further that the mere fact that Petitioner and his wife have funds or monies on

their persons, proves that they are concealing these funds. If that be the truth, then every person who carries on his person any substantial amount of money, may be said to be concealing funds, and that is all that can be said about the Petitioners in this case.

Fraser had bought the cotton at a definite price, under an express contract, with which he meant to comply in letter and spirit. He had resold the cotton, as was his right, and was interrupted in the carrying out of his contract by the beginning of litigation which has not yet ceased. The mere holding of funds during this time cannot properly or justly be called fraud or concealment.

The charge that the Frasers were fraudulently concealing these funds and attempting to dispose thereof, is completely refuted by the fact that they had on hand and delivered into the Registry of the Court, every dollar of the proceeds of the Barton cotton which came into their hands, that is, the $27,000.000 in cash and the $2,500.00 worth of bonds.

As heretofore contended, there was no failure to account, or remit promptly, the facts are that Fraser and/or the Britton Cotton Company were in the process of accounting and remitting when they were sued in the New Madrid County, Missouri, Circuit Court. They had already delivered the first check of $2,715.00.

Therefore, good sense required that they discontinue further remittances or accounting until the Courts should determine the matter, and, particularly so, since the Three Way Land Company was contending in that suit for a completely different contract to that made, and which it, together with Barton, et al., later conceded was not the contract. R. pp. 537, 584, etc.

The Government, in its Reply Brief, brushes aside or ignores the fact, that the Three Way Land Company nor Barton had complied with the law or the regulations issued by the Secretary of Agriculture, by which responsibility is to be fixed upon the buyer for the penalty, that is, by presenting to the buyer the red cards which the seller is required to have the first buyer sign or execute. It would seem that this is a necessary prerequisite to liability on the part of the Petitioner Fraser, if his written contract, evidenced by the letter of April 24th, supra, is to be cast aside and nullified as is done by the Government in this matter.

In other words, this is the means and method by which the law and the regulations prescribe that notice of his liability or responsibility for this tax shall be brought home to him. And, it would seem, that unless this is done, the learned Circuit Court of Appeals is clearly in error in holding that he collected the tax. In the absence of this essential procedure, he had a perfect right to rely upon his contract of April 24th, aforesaid, expressly excluding this responsibility.

Respectfully submitted,

WILS DAVIS,
Attorney for Petitioner.

W. H. FISHER,

W. C. RODGERS,
Of Counsel.